PT 04-16
Tax Type: Property Tax
Issue: Charitable Ownership/Use

STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
CHICAGO, ILLINOIS

HEALTHY ATTITUDE NFP, APPLICANT	**No.**	**03-PT-0006 (01-16-2998)**
v.	**P.I.N:**	**29-21-400-024**
ILLINOIS DEPARTMENT OF REVENUE		

RECOMMENDATION FOR DISPOSITION

APPEARANCES: Mr. Eugene L. Griffin of Eugene L. Griffin & Associates, on behalf of the Healthy Attitude NFP (the "applicant"); Mr. Marc Muchin, Special Assistant Attorney General, on behalf of the Illinois Department of Revenue (the "Department").

SYNOPSIS: This matter raises the following issues: (1) whether the applicant qualifies as a "school" within the meaning of 35**ILCS** 200/15-35; (2) whether real estate identified by Cook County Parcel Index Number 29-21-400-024 (the "subject property") was "used exclusively for school purposes," as required by 35**ILCS** 200/15-35, during any part the 2001 assessment year; (3) whether the applicant qualifies as an "institution of public charity" within the meaning of 35 **ILCS** 200/15-65; and, (4) whether the subject property was "actually and exclusively used for charitable purposes," as required by 35 **ILCS** 200/15-65, during any part the 2001 assessment year. The underlying controversy arises as follows:

Applicant filed a Real Estate Tax Exemption Complaint with the Cook County Board of Review (the "Board") on March 28, 2002. Dept. Group Ex. No. 1. The Board reviewed the applicant's Complaint and recommended to the Department that the requested exemption be denied. *Id.* The Department then issued its initial determination in this matter on November 21, 2002 which denied the requested exemption on grounds that the subject property is not in exempt ownership and not in exempt use.

Applicant filed an appeal to this denial and later presented evidence at a formal evidentiary hearing, at which the Department also appeared. Following a careful review of the record made at that hearing, I recommend that the Department's initial determination be affirmed.

FINDINGS OF FACT:

1. The Department's jurisdiction over this matter and its position therein are established by the admission of Dept. Group Ex. No. 1.
2. The Department's position in this matter is that the subject property is not in exempt ownership and not in exempt use. *Id*.
3. The subject property is located in South Holland, IL and improved with a 2 story, 30,000 square foot building that applicant uses as a health and fitness facility. Dept. Ex. No. 2; Applicant Ex. Nos. 1, 2, 3.
4. Applicant, an Illinois not-for-profit corporation organized for what its Articles of Incorporation only describe as "[e]ducational and athletic" purposes, obtained ownership of the subject property pursuant to the terms of an Assignment of Beneficial Interest dated October 31, 2001. Applicant Ex. Nos. 5, 8, 9.

5. The Internal Revenue Service determined that the applicant qualifies for tax exempt status under Section 501(a) of the Internal Revenue Code, as an organization described in Section 501(c) (7)[1] thereof, on October 18, 2002. Applicant Ex. No. 11.

6. An unaudited profit and loss statement contains the following information relative to applicant's financial structure for the period January 1, 2001 through December 31, 2001:

Source	Amount	% of Total[2]
Revenue		
Dues and Court Time	$ 510,402.30	
Total Revenues	**$ 510,402.30**	**100%**

1. Sections 501(a) and 501(c)(7) of the Internal Revenue Code (26 U.S.C.A. §§501(a), 501(c)(7)) state as follows:

> 26 U.S.C.A. § 501
>
> **(a) Exemption from taxation.**--An organization described in subsection (c) or (d) or section 401(a) shall be exempt from taxation under this subtitle unless such exemption is denied under section 501 or 503.
>
> ****
>
> **(c) List of exempt organizations.**--The following organizations are referred to in subsection (a):
>
> ****
>
> **(7)** Clubs organized for pleasure, recreation, and other nonprofitable purposes, substantially all of the activities of which are for such purposes and no part of the net earnings of which inures to the benefit of any private shareholder.
>
> 26 U.S.C.A. §§501(a), 501(c)(7).

2. All percentages shown herein are approximations derived by dividing the amounts shown in the relevant category by the total revenues or expenses shown on the relevant line of the second column. Thus, $13,188.97/$504,174.43 =.0262 (rounded four places past the decimal) or 3%.

Expenses		
Advertising	$ 13,188.97	3%
Bank Charges	$ 110.00	<1%
Bonus and Commissions	$ 1,574.00	<1%
Child Care	$ 200.00	<1%
Computer Service	$ 305.67	<1%
Depreciation	$ 65,432.00	13%
Dues & Subscriptions	$ 378.00	<1%
Electric	$ 41,280.12	8%
Equipment Leasing	$ 34,594.06	7%
Source	**Amount**	**% of Total**
Expenses (Cont'd.).		
Gas	$ 7,721.23	2%
Income Tax	$ 884.70	<1%
Instructors Fees	$ 300.00	<1%
Instructors	$ 10,475.00	2%
Insurance	$ 12,003.01	2%
Interest Expense	$ 38,939.46	8%
Legal & Accounting	$ 6,270.00	1%
License & Fees	$ 405.00	<1%
Maintenance	$ 4,016.36	1%
Maintenance Supplies	$ 13,460.69	3%

Medical Expense	$ 600.00	<1%
Office Supplies	$ 2,215.82	<1%
Payroll Expense	$ 94,402.69	19%
Payroll Tax – Unemmployment	$ 292.93	<1%
Payroll Tax Expense	$ 9,652.52	2%
Payroll Taxes	$ 9,925.58	2%
Pool Supplies	$ 1,848.49	<1%
Printing	$ 1,403.98	<1%
Promotion Expenses	$ 2,780.79	1%
Real Estate Taxes	$ 46,521.89	9%
Refund	$ 1,745.50	<1%
Repair & Maintenance	$ 40,232.12	8%
Returns	$ 24,970.00	5%
Scavenger	$ 691.87	<1%
Telephone	$ 2,066.59	<1%
Travel Expenses	$ 3,541.00	1%
Vending Supplies	$ 6,129.63	1%
Water	$ 3,614.76	1%
Total Expenses	**$ 504,174.43**	100%
RECONCILLIATION:		
Total Revenues	$ 510,402.30	
Total Expenses	$ -	

	504,174.43	
Net Income	**$ 6,227.87**	

Applicant Ex. No. 10.

Applicant's membership and fee structure for 2001[3] was as follows:

A. Total Members = 1,100

B. Enrollment Fee = $100.00

C. Dues = Average of $25.00 per month or $300.00 per year.[4]

Tr. pp. 19, 27, 33, 54-56.

7. Applicant's facility contains an Olympic-size lap pool, a cardiovascular center, strength training equipment, an aerobic studio, racquetball, basketball, and volleyball courts, sauna room and steam rooms, a whirlpool and locker rooms. Applicant Ex. No. 16.

8. Applicant also offers fitness profile testing, as well as various exercise classes and fitness-related workshops, at the subject property. Applicant Ex. No. 12, 13, 14, 15, 18.

9. Applicant does not charge its paying members any separate instructional fees for the classes or workshops. It does, however, charge the members for any materials used in these programs. Tr. p. 30.

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3. The facts and uses described in this and all subsequent Findings of Fact shall be understood to be facts and uses relevant to or taking place during the 2001 assessment year unless context clearly specifies otherwise.

4. The exact amount of annual dues for 2001 was unspecified in the record. However, $25.00 (average monthly dues) x 12 (months in a calendar year) = $300.00 average annual dues per year in 2001.

For further discussion of applicant's membership and fee structures and their implications for the result in this case, *see*, *infra* at pp. 12-19.

CONCLUSIONS OF LAW:

I. CONSTITUTIONAL AND STATUTORY CONSIDERATIONS

Article IX, Section 6 of the Illinois Constitution of 1970 provides as follows:

> The General Assembly by law may exempt from taxation only the property of the State, units of local government and school districts and property used exclusively for agricultural and horticultural societies, and for school, religious, cemetery and charitable purposes.

Pursuant to Constitutional authority, the General Assembly enacted Sections 15-35 and 15-65 of the Property Tax Code (35 **ILCS** 200/1-1, *et seq*.) which, in relevant part, provide for exemption of the following:

200/15-35. Schools.

> All property donated by the United States for school purposes and all property of schools, not sold or leased or otherwise used with a view to profit, is exempt, whether owned by a resident or non resident of this State or by a corporation incorporated in any state of the United States. Also exempt is:
>
> ***
>
> (b) property of schools on which the schools are located and any other property of schools used by the schools exclusively for school purposes, including, but not limited to, student residence halls, dormitories and other housing facilities for students and their spouses and children, staff housing facilities, and school-owned and operated dormitory or residence halls occupied in whole or in part by students who belong to fraternities, sororities, or other campus organizations.
>
> (c) property donated, granted, received or used for public school, college, theological seminary, university, or other educational purposes, whether held in trust or absolutely.

35 **ILCS** 200/15-35.

200/15-65. Charitable purposes

> 15-65. Charitable purposes. All property of the following is exempt when actually and exclusively used for charitable or beneficent purposes, and not leased or otherwise used with a view to profit:
>
> (a) Institutions of public charity.
>
> ***
>
> (c) old people's homes, facilities for persons with a developmental disability, and not-for-profit organizations providing services or facilities related to the goals of educational, social and physical development, if, upon making application for the exemption the applicant provides affirmative evidence that the home or facility or organization is an exempt organization under paragraph (3) of Section 501(c) of the Internal Revenue Code [26 U.S.C.A. Section 501] or its successor, and either: (i) the bylaws of the home or facility or not-for-profit organization provide for a waiver or reduction, based on an individual's ability to pay, of any entrance fee, assignment of assets, or fee for services, or, (ii) the home or facility is qualified, built, or financed under Section 202 of the National Housing Act of 1959, [12 U.S.C.A. Section 1701 *et seq*.] as amended.

35 **ILCS** 200/15-65(a), (c).

II. THE BURDEN OF PROOF AND RELATED CONSIDERATIONS

Property tax exemptions are inherently injurious to public funds because they impose lost revenue costs on taxing bodies and the overall tax base. In order to minimize the harmful effects of such lost revenue costs, and thereby preserve the Constitutional and statutory limitations that protect the tax base, Sections 15-35 and 15-65 are, like all other statutes, to be strictly construed in favor of taxation, with all doubts and debatable questions resolved against the applicant. People Ex Rel. Nordland v. the applicant of the Winnebego Home for the Aged, 40 Ill.2d 91 (1968); Gas Research Institute v. Department of Revenue, 154 Ill. App.3d 430 (1st Dist. 1987). Furthermore, the applicant

bears the burden of proving that the property it is seeking to exempt falls within the appropriate statutory provision by a standard of clear and convincing evidence. *Id*.

The clear and convincing standard is met when the evidence is more than a preponderance but does not quite approach the degree of proof necessary to convict a person of a criminal offense. Bazydlo v. Volant, 264 Ill. App.3d 105, 108 (3rd Dist. 1994). Thus, "clear and convincing evidence is defined as the quantum of proof which leaves no reasonable doubt in the mind of the fact finder as to the veracity of the proposition in question." In the Matter of Jones, 285 Ill. App.3d 8, 13 (3rd Dist. 1996); In *re* Israel, 278 Ill. App.3d 24, 35 (2nd Dist. 1996); In *re* the Estate of Weaver, 75 Ill. App.2d 227, 229 (4th Dist. 1966).

III. TECHNICAL ISSUES

Both Sections 15-35 and 15-65 contain exempt ownership requirements. Although I shall be discussing substantive elements relative to these requirements in the next section of this Recommendation, there is an issue regarding the fact that the applicant did not obtain ownership of the subject property until October 31, 2001.

Section 15-195 of the Property Tax Code, 35 **ILCS** 200/15-195, states, in relevant part, as follows:

> … when a fee simple title or lesser interest in property is purchased, granted, taken or otherwise transferred for a use exempt from taxation under this Code, that property shall be exempt from taxes from the date of the right of possession, except that property acquired by condemnation is exempt as of the date the condemnation petition is filed.

35 **ILCS** 200/15-195

In this case, the applicant did not obtain it "right of possession" to the subject property until October 31, 2001. Therefore, any exemption concerns herein are limited to the 17% of the 2001 assessment year[5] that transpired between October 31, 2001 and December 31, 2001 by operation of Section 15-195 of the Property Tax Code.

IV. SUBSTANTIVE ISSUES

A. The "Charitable" Exemption[6]

An entity seeking to exempt real estate under Section 15-65(a) must prove that the property in question is: (1) "owned" by a duly qualified "institution of public charity;" and, (2) actually and exclusively used for "charitable purposes;" and, (3) not leased or otherwise used with a view to profit. 35 **ILCS** 200/15-65(a); Methodist Old People's Home v. Korzen, 39 Ill.2d 149 (1968).

1. LACK OF EXEMPT OWNERSHIP

By definition, an "institution of public charity" operates to benefit an indefinite number of people in a manner that persuades them to an educational or religious conviction that benefits their general welfare or otherwise reduce the burdens of government. Crerar v. Williams, 145 Ill. 625 (1893). It also: (1) has no capital stock or shareholders; (2) earns no profits or dividends, but rather, derives its funds mainly from public and private charity and holds such funds in trust for the objects and purposes expressed in its charter; (3) dispenses charity to all who need and apply for it; (4) does not provide gain or profit in a private sense to any person connected with it; and, (5) does

5. Section 1-155 of the Property Tax Code defines the term "year" for Property Tax purposes as meaning a calendar year. 35 **ILCS** 200/1-155.

6. I have elected to discuss the charitable exemption first for reasons of promoting greater clarity that will become more obvious throughout the course of this Recommendation.

not appear to place obstacles of any character in the way of those who need and would avail themselves of the charitable benefits it dispenses. Methodist Old People's Home v. Korzen, 39 Ill.2d 149, 156, 157 (1968).

These factors are not to be applied mechanically or technically. DuPage County Board of Review v. Joint Comm'n on Accreditation of Healthcare Organizations, 274 Ill. App. 3d 461, 466 (2nd Dist. 1995). Rather, they are to be balanced with an overall focus on whether, and to what extent, applicant: (1) primarily serves non-exempt interests, such as those of its own dues-paying members (Rogers Park Post No. 108 v. Brenza, 8 Ill.2d 286 (1956); Morton Temple Association v. Department of Revenue, 158 Ill. App. 3d 794, 796 (3rd Dist. 1987)); or, (2) operates primarily in the public interest and lessens the State's burden. (DuPage County Board of Review v. Joint Comm'n on Accreditation of Healthcare Organizations, *supra*); Randolph Street Gallery v. Department of Revenue, 315 Ill. App.3d 1060 (1st Dist. 2000)).

The first step in determining whether the applicant qualifies as an "institution of public charity" is to examine the language of its organizational documents. Morton Temple Association v. Department of Revenue, 158 Ill. App. 3d 794, 796 (3rd Dist. 1987). Applicant's articles of incorporation recite that it is organized for unspecified "[e]ducational and athletic" purposes. Applicant Ex. Nos. 5, 8. Such purposes may be consistent with the types of activities encompassed within the definition of "charity" articulated in Crerar v. Williams, *supra*. However, mere "statements of the agents of an institution and the wording of its governing documents evidencing an intention to [engage in exclusively charitable activity] do not relieve such an institution of the burden of proving that ... [it] actually and factually [engages in such activity]." Morton Temple

Association v. Department of Revenue, *supra*. Therefore, "it is necessary to analyze the activities of the [applicant] in order to determine whether it is a charitable organization as it purports to be in its charter." *Id*.

This is especially true where, as here, there exist discrepancies in the evidence concerning whether applicant's organizational documents contained any language that authorized its management to waive or reduce fees and the extent to which the applicant actually waived or reduced such fees during the period in question. The copy of applicant's by-laws submitted into evidence as Applicant Ex. No. 7 contained a provision that authorized the applicant's management to "adopt and implement" policies that offered discounted rates to "charitable organizations"[7] and waived or reduced fees for those who otherwise could not otherwise afford to use the facilities. Applicant Ex. No. 7. However, the testimony of applicant's president, Dennis Norman, was inconsistent, at best, with respect to whether that policy was included within applicant's by-laws at any point during the tax year currently in question.

Mr. Norman first testified on direct that he was "not exactly sure" when this provision was added. Tr. p. 24. He later admitted on cross-examination that the provision "was not included" when the applicant submitted its initial exemption application to the Department on March 27, 2002 (Tr. p. 50; Dept. Ex. No. 2) and then reiterated that he was "not sure" when the provision was added. (Tr. p. 51).

Such testimony does not approach the clear and convincing standard that is necessary to sustain applicant's burden of proof because that standard is "defined as the quantum of proof which leaves no reasonable doubt in the mind of the fact finder as to

7. The by-laws do not specify the criteria that applicant would employ to determine what constitutes a "charitable organization."

the veracity of the proposition in question." In the Matter of Jones, *supra*; In *re* Israel, *supra*; In *re* the Estate of Weaver, *supra*. At the very least, Mr. Norman's testimony leaves real and substantial doubts in my mind as to what, if any, fee waiver provisions applicant's by-laws contained during the period currently under review. Because all such doubts must be resolved in favor of taxation (People Ex Rel. Nordland v. the applicant of the Winnebego Home for the Aged, *supra*; Gas Research Institute v. Department of Revenue, *supra*), I must conclude that the applicant's by-laws did not contain such a provision during this period.

Even if the by-laws did contain a waiver provision during the period in question, the specific one subsequently included within applicant's by-laws merely *authorizes* its governing body to adopt fee waiver and other discount policies. It does not, however, prove that applicant actually dispensed any tangible forms of "charity" at the subject property. Nor does it require that applicant devote any specifically identifiable portion of its resources to endeavors that actually implemented whatever fee waiver or discount policies it might have had.

Granting fees waivers or otherwise accommodating those who demonstrate a legitimate inability to pay is indeed consistent with the dispensation of "charity." Small v. Pangle, 60 Ill.2d 510, 518 (1975). Once again, however, it is the facts and evidence relative to the business reality of the applicant's overall operations, and not the wording of its organizational documents, which ultimately determines whether the applicant qualifies as an "institution of public charity." Morton Temple Association v. Department of Revenue, *supra*. For the following reasons, I conclude that the facts and evidence relative to the business reality of this applicant's operations disclose that such operations

are, on an overall basis, more akin to those of a commercial health club than a charitable institution.

First, the applicant's only sources of operating revenue are membership dues and fees that it charges for the use of its equipment. Applicant Ex. No. 10. In this sense, the applicant's financial structure is distinguishable from the one awarded exempt status in Decatur Sports Foundation v. Department of Revenue, 177 Ill. App.3d 696 (4th Dist., 1988), wherein the entity's financial statements revealed that a substantial portion of its revenue, $76,117.00, came from contributions. Decatur Sports Foundation, *supra* at 701.

This applicant does not derive any of its income from gratuitous donations. Instead, its revenue sources are apportioned between sources strictly attributable to arms' length business transactions, with 97% of applicant's total revenues coming from dues and the remaining 3% coming from fees. (Tr. p. 26). Thus, unlike the entity awarded exempt status in Decatur Sports Foundation, this applicant's revenue structure is, in reality, no different than that of any other commercial health club.

Revenue sources may not be the sole determinative factor for present purposes. American College of Surgeons v. Korzen, 36 Ill.2d 336, 340 (1967). However, the applicant cannot be awarded charitable status unless it proves that it devotes the funds that it receives to public purposes. *Id*. This applicant has not proven that it allocates its funds to such purposes because all of the expense items shown on the financial statement admitted as Applicant Ex. No. 10 are directly related to the operation of applicant's facility. More importantly, this statement does not list a single expense item, such as scholarships, grants or other similar disbursements, which demonstrates that the applicant allocates any of its funds to public purposes. Therefore, the only conclusion I can draw

from applicant's overall financial structure is that, much like any other commercial health club, the applicant operates primarily for the benefit of its members who pay the dues and fees that in turn generate whatever revenues are necessary to cover applicant's operating expenses.

Notwithstanding this conclusion, the record discloses that other aspects of applicant's operations are patently inconsistent with the dispensation of "charity." This is especially true with respect to the evidence concerning the manner in which the applicant effectuated whatever fee waiver or reduction policy it might have had in place during the period in question. Mr. Norman testified that the applicant waived the $100.00 enrollment fee and granted 30% membership fee discounts to senior citizens, firemen, policeman, social workers, high school and college students and those engaged in the full time vocational ministry during this period. Tr. pp. 19-20, 35-36, 60. He also testified that approximately 100 of applicant's 1100 members had their fees waived or reduced during this time. Tr. pp. 33, 36, 41-42, 54-55. However, his mere testimony on such a critical issue does not rise to the level of clear and convincing evidence that is necessary to sustain applicant's burden of proof without appropriate supporting documentation. If it were otherwise, then any entity could obtain a property tax exemption, and thereby visit deleterious lost revenue costs on public treasuries, simply by presenting nothing more than testimony that, irrespective of credibility, does nothing more than serve its own interest.

If those responsible for implementing the system of property tax exemptions that the Illinois Constitution authorizes the General Assembly to create had intended for the system to operate so simplistically, they would have imposed a more lenient standard of

proof on entities that seek such exemptions. The system, however, does not so operate precisely because the standard of proof that applies in this and all other property tax cases is clear and convincing evidence. People *ex rel*. Nordland v. Home for the Aged, *supra*; Gas Research Institute v. Department of Revenue, *supra*. Nevertheless, even if I accepted Mr. Norman's testimony concerning the extent to which applicant waived or reduced fees at face value, the following excerpts from his testimony prove that the mechanism that applicant employed to effectuate any waivers or reductions it may have granted was inconsistent with the dispensation of "charity[:]"

> Q. [by counsel for the Applicant]: Did Healthy Attitude have a policy in place during 2001 that waived fees for any of the members?
>
> A. [by Mr. Norman]: Yes.
>
> Q. Can you explain that?
>
> A. We find ourselves in a social economic demographic area where there is price sensitivity and a measurable amount of poverty. There will be people who come to us who cannot afford our fees.
>
> And we will make arrangements for them to use the facility at dramatically reduced fees[8] and in a number of instances no fees at all.[9] We presently have – in 2001 we had over a hundred people using our facilities who were not paying any form of dues or fees.
>
> Q. And what percentage of your membership was that in 2001?

8. The mere statement that applicant made arrangements to use the facility at "dramatically reduced fees" is highly self-serving in the present context. More importantly, it is legally insufficient to constitute clear and convincing evidence of the matter at issue where, as here, the applicant did not submit fee schedules or other documentary evidence that set forth applicant's fee structure.

9. This statement is, likewise, self-serving and legally insufficient to prove the matter that it asserts in the absence of documentary evidence proving exactly how many people did not pay any fees.

A. Approximately 10 percent.[10]

Q. And how is that determination made or how was that determination made in 2001?

A. Somewhat subjectively, somewhat objectively. I meet with individuals. And there's instances where I ask them to document it. There's other instances where it's just clear. So very frankly I'll put them up and issue them a membership card. S*o I make that determination*.

***

Q. [by counsel for the Department]: How many people had their dues waived for inability to pay?

A. [by Mr. Norman]: 100.

Q. And how is the general public notified of – you said you have a charitable policy. How is the general public notified of this charitable policy?

A. *We do not make it public information that if you cannot afford to pay you just approach and we'll waive dues. But in the process of discussing our services and our fees if an inability exists, then we will slow the process down and try to discern how we can help, what they're capable of, and exactly how we should respond. But you understand Mr. Muchin, if we made it public information that you can use the facilities without paying, we couldn't operate for another 24 hours.*

***

Q. What is the criteria one must meet to be eligible for reduction or waiver?

A. Inability to pay.

Q. Just simply that? I mean, just simply those three words inability to pay?

A. See, when someone comes into our facility because they have an interest in the health and fitness services

10. I shall discuss the implications of this testimony in the context of the exempt use requirement, *infra* at pp. 19-22.

> we provide, educating them, helping them along that process, we provide that with information and then we discuss with them our fees.
>
> *If at that point its their testimony that they don't have an ability to pay, and this is subjectively determined*, where we would ask them to show [a] W-2 or something to document the fact that they're just not trying to use the facilities and pay their fair share. And then I'll frequently ask them what you can afford, what are you able to do.

Tr. pp. 37, 55-56, 60-61 (emphasis added).

This testimony reveals that the applicant effectuates what Mr. Norman references as its "charitable" policy in a very discreet and subjective manner. Applicant clearly does not advise those in need that it is willing to waive or reduce their fees unless and until they affirmatively request such assistance from Mr. Norman. Furthermore, all of the decisions that determine whether or to what extent waivers or reductions will be granted rest solely with Mr. Norman.

At least three Illinois courts have held that similar discreet and subjective processes are inconsistent with dispensation of "charity" in that they fail to apprise those in need that they can avail themselves of the services that applicant provides even if they manifest a legitimate inability to pay. Highland Park Hospital v. Department of Revenue, 155 Ill. App.3d 272, 280-281, (2d Dist. 1987); Alivio Medical Center v. Department of Revenue, 299 Ill. App.3d 647, 652 (1st Dist. 1998); Riverside Medical Center v. Department of Revenue, 342 Ill. App.3d 603 (3rd Dist. 2003). Consequently, organizations that employ such processes fail to qualify as "institutions of public charity" because their operational structures lack sufficient mechanisms for ensuring that the needy will, in fact, receive services irrespective of their ability to pay. *Id.* In the absence

of such mechanisms, it is therefore apparent that the primary purpose of applicant's operations is to provide physical fitness and other related services to those who can afford to pay the fees that it charges.

This purpose is, once again, no different than that of any other commercial health club. Thus, the fact that the advertisement admitted as Applicant Ex. No. 16 contains a "one week complimentary membership card" does not alter this conclusion because it and all of the other promotions that appear on this exhibit are tantamount to the types promotional marketing techniques or enticements for the recruitment of new, paying members that such clubs conventionally employ.

The same may be said of the series of offers that appear on the newsletter admitted as Applicant Ex. No. 17. One of these offers states, in substance, that the applicant will provide its existing membership with "1 Month Free Dues" for each new, paying member that they recruit. Another contains language to the effect that the applicant will not charge a "guest fee" to any one of a paying member's guests who uses the facilities with that paying member present, but only on a one-time per guest basis. Applicant Ex. No. 17.

In practical terms, these offers do little more than provide applicant's existing membership with incentives to increase its paid membership base. As such, whatever gratuitous distribution of its services that the applicant achieves by promoting these and the other incentives do not constitute "charity" because they are not based on the financial needs of those who cannot afford to pay the dues and fees that the applicant charges. Rather, any complimentary distribution of services that the applicant accomplishes through these and other promotional means are absolutely incidental to

their primary purpose which, based on the above, I find to be that of advancing the applicant's own business interests.

The entity that holds those business interests, the applicant, fails to qualify as an "institution of public charity" because, much like any other commercial health club, it operates primarily for the benefit of its dues paying membership. *See*, *supra* at 17, 21. *See also*, Tr. pp. 30, 32-33, 44-45. Therefore, the part of the Department's initial determination finding that the subject property is not owned by a duly qualified "institution of public charity," as required by 35 **ILCS** 200/15-65(a), should be affirmed.

2. LACK OF EXEMPT USE

Most of the above analysis applies with equal force to the exempt use requirement. Nevertheless, it should be emphasized that the word "exclusively," when used in Section 15-65 and other property tax exemption statutes means "the primary purpose for which property is used and not any secondary or incidental purpose." Pontiac Lodge No. 294, A.F. and A.M. v. Department of Revenue, 243 Ill. App.3d 186 (4th Dist. 1993).

In analyzing whether property satisfies the "exclusive" use requirement, it is appropriate to compare the relative extent to which the property is used for taxable and tax exempt purposes. Metropolitan Water Reclamation District of Greater Chicago v. Illinois Department of Revenue, 313 Ill.App.3d 463 (1st Dist. 2000), *leave to appeal denied*, October 4, 2000.

Notwithstanding any other evidentiary deficiencies concerning the extent to which applicant actually effectuated whatever "charitable" policy it may have had in place during the relevant period, Mr. Norman specifically admitted that, by subjective

standards, only 10% of applicant's membership had their fees waived or reduced during that period. Tr. pp. 41, 54, 55. This, therefore, leaves the remaining 90% of that membership as having paid their dues in full. As such, applicant's primary use of the subject property was clearly for the non-exempt purpose of benefiting that 90%. Thus, the uses that benefited the remaining 10% were incidental at best.

The record is not totally clear as to whether this 10% included persons whose uses did not qualify as "charitable" because they received the promotional discounts or other business-related enticements shown on Applicant Ex. Nos. 16 and 17. However, it does clearly divulge that on those occasions when Mr. Norman, at his sole discretion, allowed other persons or groups to use the facilities without charge or at reduced rates, the uses effectuated through such subjective means did not qualify as dispensation of "charity" in the first instance and constituted incidental uses in the second.

For instance, Mr. Norman testified that he allowed "five or six" athletes preparing for the Special Olympics to train at the subject property free of charge. Tr. pp. 37-38. He further testified that he allowed "[b]etween three and seven or eight" nursing home residents to use the facilities on Monday, Wednesday and Friday mornings for $2.00 per session. Tr. pp. 38-39.

Once again, Mr. Norman's testimony, standing alone, does not rise to the level of clear and convincing evidence that is necessary to sustain applicant's burden of proof. Even if it were, the most these portions of Mr. Norman's testimony would prove, in the best case scenario, is that: (1) the six athletes who used the subject property to train for the Special Olympics constituted barely one half of one percent of the applicant's total

membership;[11] (2) the eight senior citizens who used the facilities for $2.00 per session amounted to only slightly more than one half of one percent[12] of that membership; and, (3) the combined total of fourteen total persons (six Special Olympians and eight senior citizens), account for a paltry 1.3%[13] of applicant's total membership. Therefore, irrespective of whether one views these uses on an individual or collective basis, the ultimate fact remains that they are absolutely incidental to the non-exempt uses of those members who paid full fees and dues.

The same holds true of any of the other groups, including the Boys Clubs and the African American Fitness Professionals, that Mr. Norman may have allowed to use the subject property free of charge or at reduced rates. *See*, Tr. pp. 39–42. Unlike the Special Olympians and the senior citizens, the record does not contain any evidence, testimonial or documentary, proving how many persons were included within any of these groups or the number of times that they used the subject property relative to applicant's paid membership. Accordingly, I cannot measure the extent to which these groups used the subject property with the same precision that I did above. Nevertheless, the record does contain ample credible evidence, in the form of Mr. Norman's admissions, to prove that the subject property was primarily used for the benefit of the 90% of applicant's total membership who paid all of their fees and dues in full. This, therefore, leaves whatever "charity" might have dispensed to be divided up between the remaining 10%.

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11. 6/1,100 (total membership) = 0.0056 (rounded) or less than ½ of 1%.

12. 8/1,100 = 0.0073 (rounded) or slightly more than ½ of one percent.

13. 14/1,000 = 0.013 (rounded) or 1.3%.

Some of the "charity" included within this 10% is probably illusory, at least to the extent that it stemmed from the promotional discounts referenced above and/or discreet exercises of Mr. Norman's managerial business judgment. Accordingly, the record does not accurately reflect the true extent to which the applicant dispenses anything that, in fact, qualifies as "charity" at the subject property. However, at the very least, any uses associated with those 10% of the persons or entities who received fee waivers or reductions is, on a relative basis, completely incidental to the 90% that did not. Therefore, the portion of the Department's determination in this matter finding that the subject property was not "exclusively" used for charitable purposes, as required by 35 **ILCS** 200/15-65, should be affirmed.

3. Exemption under Section 15-65(c)

Section 15-65(c) of the Property Tax Code, 35 **ILCS** 200/15-65(c) provides for the exemption of properties that are "exclusively" used for "charitable" purposes and owned by the following entities:

> (c) old people's homes, facilities for persons with a developmental disability, and not-for-profit organizations providing services or facilities related to the goals of educational, social and physical development, if, upon making application for the exemption the applicant provides affirmative evidence that the home or facility or organization is an exempt organization under paragraph (3) of Section 501(c) of the Internal Revenue Code [26 U.S.C.A. Section 501] or its successor, and either: (i) the bylaws of the home or facility or not-for-profit organization provide for a waiver or reduction, based on an individual's ability to pay, of any entrance fee, assignment of assets, or fee for services, or, (ii) the home or facility is qualified, built, or financed under Section 202 of the National Housing Act of 1959, [12 U.S.C.A. Section 1701 *et seq*.] as amended.

35 **ILCS** 200/15-65 (c).

This particular subject property does not qualify for exemption under Section 15-65(c) for several reasons. First, this property was not "exclusively" used for charitable purposes for the reasons set forth above. Furthermore, the applicant's organizational documents did not contain the requisite waiver language during the period currently under review. Nor does the applicant derive its federal tax-exempt status from Section 501(c)(3) of the Internal Revenue Code.[14] Therefore, the subject property is neither owned by the type of entity nor primarily used for the narrow set of purposes that is necessary to qualify it for exemption under Section 15-65(c). Accordingly, the part of the Department's determination finding that the subject property did not qualify for exemption from real estate taxes for the period currently under review under this provision should be affirmed.

B. The "School" Exemption

The statutory requirements for exemption under 35 **ILCS** 200/15-35 are: (1) exempt ownership, which means that the property must be owned by a duly qualified "school"[15] (Wheaton College v. Department of Revenue, 155 Ill. App.3d 945 (2nd Dist. 1987)); and, (2) exempt use, which means that the property must be "exclusively" or primarily used for "school"-related purposes. (People ex rel. Goodman v. University of Illinois Foundation, 388 Ill. 363 (1944)).

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14. *See*, Applicant Ex. No. 11, which demonstrates that applicant derives such tax-exempt status from Section 501(c)(7) of the Internal Revenue Code.

15. The legal definition of the term "school" is, for property tax purposes, as follows:

> A school, within the meaning of the Constitutional provision, is a place where systematic instruction in useful branches is given by methods common to schools and institutions of learning, which would make the place a school in the common acceptation [sic] of the word.

People ex rel. McCullough v. Deutsche Evangelisch Lutherisch Jehova Gemeinde Ungeanderter Augsburgischer Confession, 249 Ill. 132, 137 (1911).

1. Lack of Exempt Ownership

A private entity, such as this applicant, cannot obtain an exemption from real estate taxes under Section 15-35 unless it proves both of the following by clear and convincing evidence: first, that it offers a course of study which fits into the general scheme of education established by the State; and second, that it substantially lessens the tax burdens by providing educational training that would otherwise have to be furnished by the State. Coyne Electrical School v. Paschen, 12 Ill.2d 387 (1957); Illinois College of Optometry v. Lorenz, 21 Ill. 219 (1961); Board of Certified Safety Professionals of the Americas v. Johnson, 112 Ill. 2d 542 (1986); Winona School of Professional Photography v. Department of Revenue, 211 Ill. App.3d 565 (1st Dist. 1991); Chicago & Northeast Illinois District Council of Carpenters v. Illinois Department of Revenue, 293 Ill. App.3d 600 (1st Dist. 1997), *leave to appeal denied*, April 1, 1998.

These standards restrict the grant of the school exemption in the private sector "to those programs that offer traditionally accepted academic subjects in the context of an established academic environment." Carpenters, *supra* at 616. If the exemption were not limited in this manner, then private entities that do not satisfy such standards could visit deleterious consequences on the overall tax base. *Id*. Thus:

> … a wider window of exemption would run the risk of permitting the exemption for any commercial venture offering any training in singular skills and hobbies under the guise of self improvement and would ultimately lead to the inclusion of enterprises such as karate, dance, and horseback riding schools, as well as admittedly more useful, vocational schools such as those in beauty care, television repair, and refrigeration repair, or other similar courses of instruction such as those offered here in carpentry. In any event, such an extension of the school exemption would require a legislative initiative. Presumably, legislation could be drafted, if the legislature so chose, to extend the exemption to vocational schools without opening the door to every other so-called

> educational venture so as to bring about an unwarranted erosion of the tax base.

Id.

This record fails to prove that the applicant conducts its program of physical fitness and other related classes in the type of "established academic environment" that is necessary to sustain exemption under Section 15-35. Such an environment may be found in programs that the State Illinois recognizes as being accredited for inclusion within the curricula of institutions that the State authorizes to confer degrees or diplomas. Illinois College of Optometry v. Lorenz, *supra* at 221; Carpenters, *supra* at 611-612, 616.

The programs and/or classes that applicant offers at the subject property do not constitute the type of curriculum necessary to qualify the applicant as a "school." Rather, these programs and/or classes are similar to those offered at any commercial health club in that those who elect to participate in them do so completely on their own initiative and entirely of their own volition. Nor is attendance at any of these programs required for any purpose other than an individual member's personal choice. Consequently, their participation therein does not fulfill any educational mandate imposed by the State.

This is especially true where, as here, the record lacks evidence proving that the applicant received or maintained any State-sanctioned accreditation for any of its programs or classes during the relevant period. Absent evidence of such accreditation, the programs and/or classes that the applicant offered at the subject property cannot be considered to be part of a curriculum that fits within the general scheme of education that the State has established. Coyne Electrical School v. Paschen, *supra*; Board of Certified

supra; Winona School of Professional Photography v. Department of Revenue, *supra*; Carpenters, *supra*.

Furthermore, the record also lacks evidence proving that the State has authorized the applicant to confer diplomas or degrees or otherwise operate as the type of "school" whose property is subject to exemption under Section 15-35. Carpenters, *supra* at 616. Thus, for all the above reasons, the only conclusion that this record supports relative to the classes and/or programs that applicant offers at the subject property is that they constitute the types of recreational or hobby-related training that the Carpenters court believed would unjustifiably dilute the tax base if they were included within the narrow "window of exemption" that Section 15-35 affords.

The fact that students from Prairie State and South Suburban Colleges intern at the subject property (Applicant Ex. No. 16; Tr. p. 75) does not alter this conclusion. I shall discuss the use-related implications associated with these interns in the next section of this Recommendation. However, for present purposes, it must be observed that although Prairie State and South Suburban ultimately issue both the course credits and the degrees that the interns receive, neither Prairie State nor South Suburban is the applicant in this case.

Furthermore, the entity that *is* the applicant herein, Healthy Attitude NFP, enjoys a legal identity that is separate and distinct from that of both Prairie State and South Suburban by virtue of its status as an Illinois not-for-profit corporation. Consequently, while these colleges may qualify as duly constituted "schools" for present purposes, Healthy Attitude NFP does not. Therefore, Healthy Attitude NFP's effort to obtain exempt status by reference to the business relationships that it maintains with Prairie

State and South Suburban amounts to a form of bootstrapping that Illinois law cannot sanction lest it cause unwarranted dilution of the tax base.

2. Lack of Exempt Use

The exempt use requirement that Section 15-35 contains is very similar to the one included within Section 15-65, at least to the extent that the word "exclusively," when used in Section 15-35 means the primary use of real estate and not any incidental or secondary uses thereof. Pontiac Lodge No. 294, A.F. and A.M. v. Department of Revenue, 243 Ill. App.3d 186 (4th Dist. 1993). The only difference, therefore, is that Section 15-35 affords an exemption for properties that are "exclusively" used for duly qualified "school" purposes, whereas Section 15-65 provides for the exemption of properties that are "exclusively" used for "charitable" purposes.

This difference does not alter the outcome of a case, such as the present one, where the subject property is primarily used for non-exempt purposes consistent with the operation of a commercial health club. Although I developed this point more fully in my analysis of the charitable exemption, I note that, in the "school" context, it is not uncommon for commercial health clubs to offer short-term classes in aerobics, swimming or other aspects of physical fitness to their members.

Merely offering such classes does not, *ipso facto,* prove that the applicant or any other commercial health club qualifies as a "school" for purposes of Section 15-35. Nor does it prove that such health clubs are primarily used for "school"-related purposes, for if it were, then all commercial health clubs could obtain property tax exemptions that they would not otherwise be lawfully entitled to receive. This, in turn, would cause unwarranted dilution of the tax base by extending the Section 15-35 exemption to entities

and uses that do not fit within the relatively narrow legal boundaries that the Illinois Constitution and the General Assembly established to protect the tax base.

Furthermore, because the subject property is primarily used for the non-exempt purpose of providing physical fitness and other related services to its paying members, the most that the applicant can possibly prove on this record is that this property is incidentally used for "school"-related purposes. Thus, even if I assumed strictly *arguendo*, that the applicant qualified as a "school," and that the classes and other related activities it offered at the subject property constituted the types of activities that are properly subject to exemption under Section 15-35, the ultimate fact remains that the uses associated with these classes and other related activities are, at best, secondary incidents of that non-exempt primary use.

The same may be said with respect to any of the uses associated with the interns from Prairie State and South Suburban Colleges. Once again, these interns receive both their course credits and their degrees from entities that are not the applicant in this case. Consequently, whatever "school"-related uses the interns who attend those colleges make of the subject property are properly attributed to Prairie State and South Suburban, and therefore, cannot be ascribed to the applicant, Healthy Attitude, NFP.

More importantly, the record fails to disclose the exact number of students from Prairie State and/or South Suburban that interned at the subject property during the period in question. Nor does it contain any evidence proving what specific course requirements or other academic obligations these students fulfilled during their internships. The record contains no documents, such as work schedules, that would divulge the number of hours the interns worked at the subject property. Nor are there any documents which provide

information as to the specific business relationship between Prairie State, South Suburban and the applicant. Absent this information, and in conjunction with the other legal shortcomings associated with applicant's position in this regard, the record does not contain enough evidence to prove that the subject property is primarily used as a venue for allowing the interns to fulfill whatever internship or work study requirements that Prairie State and/or South Suburban may establish for their degrees. Therefore, the most applicant has proven is that the interns' use of the subject property is incidental to the non-exempt uses detailed above.

Based on the above, I conclude that the subject property was neither owned by a duly qualified "school" nor exclusively used for "school"-related purposes, as required by 35 **ILCS** 200/15-35, during the 17% of the 2001 assessment year that is currently at issue. Therefore, the portion of the Department's initial determination that denied the subject property exemption from real estate taxes for this 17% of the 2001 assessment year under Section 15-35 of the Property Tax Code should be affirmed.

V. SUMMARY

In summary, the subject property does not qualify for exemption from real estate taxes for the period currently under review because it does not satisfy either the exempt ownership or the exempt use requirements contained in Sections 15-35, 15-65(a) and 15-65(c) of the Property Tax Code.

The subject property is not in exempt ownership because it was not owned the types of entities, such as properly constituted "schools" specified in Section 15-35 or duly qualified "institutions of public charity" identified in Section 15-65(a), whose property is subject to exemption under these provisions. Rather, it was owned by an entity, the

applicant, whose operations are, on the whole, more akin to those of a commercial health club than a "school," "institution of public charity" or any of the entities described in Section 15-65(c) of the Property Tax Code. Therefore, the applicant does not qualify as an exempt owner for purposes of Sections 15-35, 15-65(a) and 15-65(c).

The subject property is not in exempt use because it was not "exclusively" or primarily used for the narrow set of "school" and/or "charitable" purposes that Sections 15-35 and 15-65 mandate as being necessary to obtain exemption thereunder. Instead, this property was primarily used in much the same manner as any other commercial health club, at least insofar as it provided physical fitness and other related services that, save for some very discreet and incidental exceptions, benefited the applicant's dues-paying membership. Accordingly, the statutory exempt use requirements, which require that the subject property be primarily used for "school"-related purposes in the case of Section 15-35 and "charitable" purposes in the case of Section 15-65, are not satisfied herein. Therefore, the Department's initial determination in this matter should be affirmed.

WHEREFORE, for all the aforementioned reasons, it is my recommendation that real estate identified by Cook County Parcel Index Number 29-21-400-024 remain on the tax rolls for the entire 2001 assessment year.

Date: 5/20/2004

Alan I. Marcus
Administrative Law Judge